

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

FISCHER *et al.*

Appl. No.: 10/578,900

Filed: March 8, 2007

For: **2-Ethyl-4,6-dimethyl-phenyl-
substituted Spirocyclic Tetramic
Acid Derivatives**

Confirmation No.: 3603

Art Unit: 4161

Examiner: Rodriguez-Garcia, Valerie

Atty. Docket: 2400.0410000/VLC/BAH

Reply to Restriction Requirement

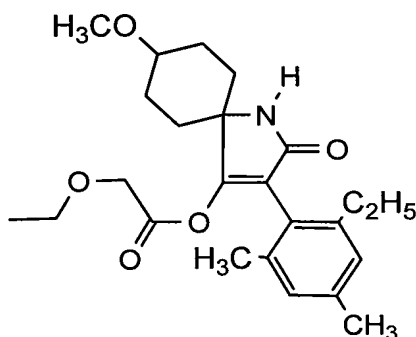
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the Office Action dated June 2, 2008, requesting an election of one invention to prosecute in the above-referenced patent application, Applicants hereby provisionally elect to prosecute the invention of Group I, represented by claims 1-5. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed.

The Office has also required Applicants to elect a single species for search purposes. Applicants provisionally elect as a single species the compound I-b-8 (specification as filed, pp. 78-79):

(I-b-8):



This election is made with traverse. The claims of Group I are directed to compounds of Formula I, the claims of Group II are directed to a process for preparing the compounds of Formula I, and the claims of Group III are directed to a method of using the compounds of Formula I as pesticides and herbicides. Groups I, II, and III therefore are related as products, processes for manufacturing such products, and a use of such products, respectively. Section 1.475 (b)(3) of Title 37 of the Code of Federal Regulations states that a national stage application containing claims to a product, process of manufacture, and a process of use of said product will be considered to have unity of invention. Examining these three groups together would therefore not place an undo burden on the Examiner.

Furthermore, the Examiner has mischaracterized the technical feature of Group I as a spirocyclic pyrrolidin ketoenol core. The actual technical feature of Group I is instead the pyrrolidin ketoenol core having 2-ethyl-4,6-dimethylphenyl substitution. Reconsideration and withdrawal of the Restriction Requirement, and consideration and allowance of all pending claims, are respectfully requested.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefore are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

A handwritten signature in black ink, appearing to read "Vincent L. Capuano". The signature is fluid and cursive, with a large initial "V" and a stylized "C".

Vincent L. Capuano
Attorney for Applicants
Registration No. 42,385

Date: July 2, 2008

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